CIVIL PROCEDURE

CASES AND MATERIALS

(Tentative Edition, 1984-85)

By

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CHAPTERS 6, 7, 8 and 9

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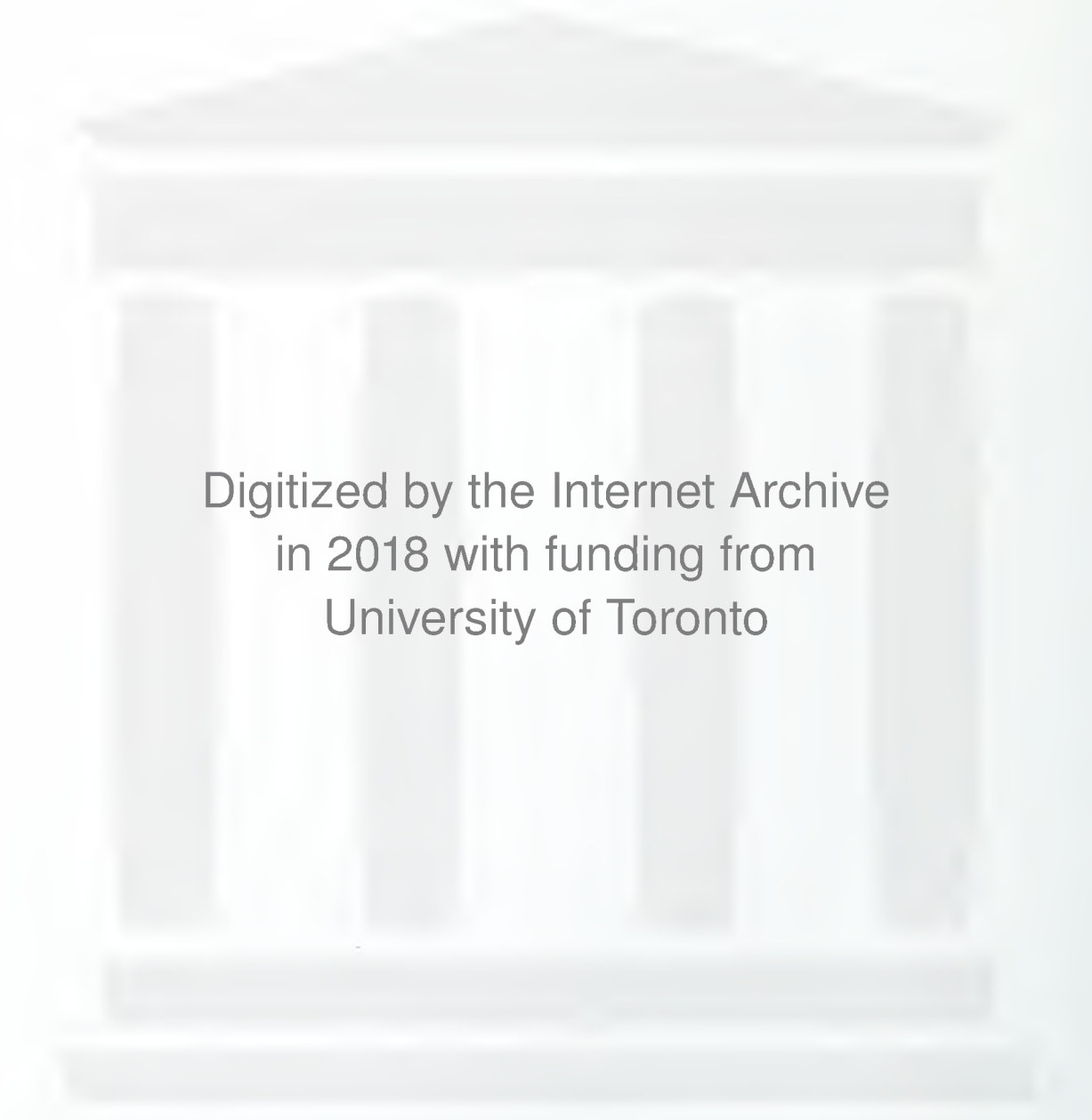

CHAPTER 6

DISCOVERY

CHAPTER 7

RES JUDICATA

CHAPTER 8. JOINDER

A. INTRODUCTION

A lawsuit in its simplest form involves a single plaintiff asserting a single claim (or cause of action) against a single defendant. To date we have more or less assumed this to be the case. In this Chapter we will see that litigation often has to be expanded beyond this simple framework, and we will examine the principles that govern the expansion and the problems involved.

Expansion beyond a simple suit between two parties may occur for various reasons. In the ordinary private law suit, based on the traditional bi-polar model, it may be appropriate to expand the scope of the action to include other claims or parties. The following example illustrates some of the issues which might arise.

> While driving her ten-year-old son to the dentist in her husband's car, Ms. Smith stopped at a red light. Just as the light changed her car was struck from the rear by a leased car owned by Ava's Leasing and driven by the lessee, McDonald. The impact thrust the Smith car into the intersection where it was again struck by a car owned and operated by Jones, who is uninsured, and who entered the intersection against a red light. Ms. Smith and her son were seriously injured in the collision and required extensive hospitalization and medical treatment and the Smith car required costly repairs. While in hospital Ms. Smith developed gangrene in her injured right leg and ultimately the leg had to be amputated.

When consulted by Ms. Smith with regard to bringing an action for damages the question of who should be made the parties to the action will require careful consideration. Investigation will be necessary, not only as to how the accident occurred, but also as to the ownership of the vehicles involved and the proper description of the owners. A knowledge of the substantive and procedural law applicable will also be essential. All of these matters present a number of issues which will have to be resolved before an action is begun.

For example, who should be named as plaintiffs in the action? Will it be sufficient to join Ms. Smith and her son as plaintiffs or is it also necessary to join Mr. Smith? What, if anything, is to be done about the fact that the son is an infant. Can he sue alone or must another person, e.g. Mr. Smith sue on his behalf? Assuming Mr. Smith is joined as a plaintiff, which may be necessary in order to recover Ms. Smith's medical and hospitalization expenses, can he assert multiple claims by also suing for the damage to his vehicle? Can he instead bring a separate and later action for the damage to his vehicle?

Who should be named as defendants in the action? Should both owners and both drivers be sued? What are the tactical and legal considerations that bear on this issue? Of what relevance is the fact that Jones is uninsured or that McDonald's car is leased? If it is believed that the loss of Ms. Smith's leg was contributed to by negligence on the part of the doctor and hospital staff who treated her, should they also be joined in the action? Does the law permit them to be joined in the same action as that against the automobile owners and drivers?

To what extent is it open to the defendants to further expand the scope of the Smiths' action? If McDonald suffered injuries in the accident and believes they were caused by Ms. Smith's negligence, can he claim in this action for his injuries? What happens if the Smiths do not elect to sue Jones, but the other defendants wish to add Jones as a party defendant? Suppose McDonald claims he crashed into Ms. Smith because the brakes on his car, repaired an hour earlier, failed to operate and he wants to add the repairer as a party to the action. Can he do this?

As you can see from the above problem, the determination of who should be the parties and what claims may be asserted in the action is often not an easy task. Indeed, it is frequently a complex one. As in earlier chapters of this book the approach will be multi-dimensional. You will find that there are rules to be extracted from the cases, the Rules of Practice and statutes. Also these rules need to be understood, rationalized (where possible) and questioned. But rules are of little use to a lawyer unless he knows how to work with them. In the following materials you will find plenty of opportunities to try your hand at applying the rules to concrete situations.

In the earlier sections of this Chapter we will consider joinder only from the viewpoint of the plaintiff: the extent to which the plaintiff may assert multiple claims and join multiple parties and who should be made parties in particular types of situations. We will leave to later sections consideration of how the defendant may further extend the scope of the plaintiff's action by asserting counter-claims and by taking third party proceedings

Problems of a different order arise where litigation involves important public issues, as in the context of constitutional litigation. In the private law setting, the plaintiff will usually be someone who has suffered an identifiable and legally recognized harm or injury who seeks redress from the one alleged to have caused such harm or injury. In public law cases there are sometimes difficult questions of standing to sue. Who should be able to launch a suit which challenges the validity of a law, regulation or government practice? Any concerned citizen or only those who are advertly affected? Is the framework of traditional bi-polar litigation model adequate for such cases? Once standing rules are satisfied, should other interested parties be allowed a say? Will restricting participation in the suit to the parties unduly restrict the information and argument the court should take into account? Who is an "interested party" in such cases? These issues are considered below.

B. JOINDER OF MULTIPLE CLAIMS

What is the scope of the plaintiff's option to increase the size of the litigation beyond the simple situation of one plaintiff asserting one claim against one defendant. The plaintiff may do this in two ways: (1) by uniting multiple claims in one action (joinder of claims); (2) by uniting multiple plaintiffs and/or multiple defendants in an action (joinder of parties). The major issue is how far the plaintiff or plaintiffs may go in joining multiple claims and parties in one action. In other words, what limits are there on the maximum size of the litigation? However, there is also the less obvious issue of the minimum size of the litigation. As we will see, rules exist which may compel a plaintiff to join multiple parties and to assert multiple claims.

With regard to the maximum size of the litigation, the Rules of Practice contain very broad and liberal provisions for the joinder of multiple claims and parties in one action. The reasons why litigants may want multiple joinder and why our procedural system permits, and often encourages, the practice will become clear from an examination of the cases and materials below. At this stage it will be helpful, however, to state in a general way the reasons for joinder.

The essential starting point is the proposition that in general the interests of society and of the litigants are better served by one lawsuit rather than several. It is usually more economical–for the litigants and for the court system–to litigate matters in one action rather than in numerous separate actions. For example, in most cases the trial in a single action of all the matters in dispute between the parties will take less time, trouble and money than several actions. Thus, the gain to be derived from broad joinder is the convenience and utility of settling all differences between parties at

CHAPTER 9

JURISDICTION